

OBJECTIVES AND PRINCIPLES (WIPO/GRTKF/IC/18/9) AS MODIFIED BY THE OPEN-ENDED
INFORMAL DRAFTING GROUP
AT IGC 18

WORK IN PROGRESS

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OBJECTIVE 1

Objective 1 - Option 1

Supported by the European Union, United States of America, Canada, Australia, Republic of Korea, Russian Federation, Switzerland, Singapore

Ensure those accessing genetic resources and associated traditional knowledge comply with specific conditions for access, use and benefit-sharing under national law.

Objective 1 - Option 3

Supported by the African Group, Asian Group, Brazil, Peru, Colombia, Panama, El Salvador, China, Ecuador

Ensure that applicants for intellectual property rights involving the utilization of genetic resources, their derivatives and/or associated traditional knowledge comply with requirements for prior informed consent, fair and equitable benefit-sharing and the provision of information about the country of origin or source of genetic resources, in accordance with national laws and customary norms.

Objective 1 - Option 4

Supported by El Salvador, Ecuador, Nigeria, Brazil, Colombia, Panama, Peru

Ensure that those accessing genetic resources, their derivatives and/or associated traditional knowledge comply with requirements of prior informed consent, fair and equitable benefit-sharing and the provision of information about the country of origin and/or source of genetic resources, in accordance with national laws and customary norms.

PRINCIPLES OF OBJECTIVE 1

Principles of Objective 1 - Option 1

Supported by India, Indonesia, Sri Lanka, Australia, Brazil, El Salvador, Ecuador, Thailand

Recognize the wide variety of ownership arrangements pertaining to genetic resources, their derivatives and/or associated traditional knowledge, including the sovereign rights of States, the rights of indigenous peoples and local communities, as well as private property rights.

Principles of Objective 1 - Option 2

Supported by Sri Lanka

Recognize the wide variety of ownership arrangements pertaining to genetic resources and associated traditional knowledge, including the sovereign rights of States, the rights of indigenous peoples and local communities, as well as private property rights.

Principles of Objective 1 – Option 3

Supported by Indonesia, Australia, Brazil, African Group, USA, Japan, European Union, Russian Federation, Nigeria, Niger, Canada, El Salvador, Republic of Korea, Ecuador, Switzerland, Singapore, Colombia, Thailand

Sovereign states have the authority to determine access to genetic resources in their jurisdiction. Subject to national legislation, persons accessing traditional knowledge associated with genetic resources from the knowledge holder(s) and applying that knowledge in the development of an invention should obtain approval from the knowledge holder(s) and seek their involvement.

Principles of Objective 1 – Option 4
Supported by the African Group, Colombia

States have the authority to determine access to genetic resources. Persons accessing traditional knowledge associated with genetic resources from the knowledge holder(s) and applying that knowledge in the development of an invention should obtain approval from the knowledge holder(s) and seek their involvement.

Principles of Objective 1 – Option 5
Supported by Syria

Ensure respect for the principle of self determination of indigenous peoples and local communities, including peoples partially or entirely under occupation and their rights over genetic resources and associated traditional knowledge, including the principles of prior informed consent, mutually agreed terms, and full and effective participation, noting the United Nations Declaration on the Rights of Indigenous Peoples.

OBJECTIVE 2

Objective 2 - Option 1

Supported by Australia, Russian Federation

Prevent intellectual property rights being granted in error and/or bad faith on genetic resources, their derivatives and associated traditional knowledge.

Objective 2 - Option 2

Supported by Mexico, Indonesia, Brazil, Islamic Republic of Iran, Ecuador, Colombia, El Salvador, Peru, Panama, Syria, Nepal

Prevent intellectual property rights being granted on genetic resources, their derivatives and associated traditional knowledge, if access to such resources and associated traditional knowledge has been obtained illegally.

Objective 2 - Option 3

Supported by Australia, Russian Federation, Mexico, Indonesia, El Salvador, Canada, USA, Switzerland, European Union, Republic of Korea, Japan

Prevent patents from being granted in error for inventions that are not novel or inventive in light of genetic resources and associated traditional knowledge.

Objective 2 - Option 4

Supported by Australia, African Group, India, Nigeria, Sri Lanka, Nepal

Prevent intellectual property rights from being granted in error and/or bad faith for intellectual property applications relating to genetic resources, their derivatives and/or associated traditional knowledge that do not satisfy the eligibility conditions.

Objective 2 - Option 5

Supported by Bolivia, Holy See

Ensure that no patents on life and life forms are granted for genetic resources and associated traditional knowledge, because they do not comply with the requirements of novelty and inventive step.

Objective 2 - Option 6

Supported by the African Group, India, Islamic Republic of Iran, Ecuador, Colombia, Nigeria, Peru, Panama, Syria

Prevent intellectual property rights being granted where there is no free, prior and informed consent, no arrangements on mutually agreed terms for fair and equitable benefit-sharing, and disclosure requirements have not been met, to increase transparency in access and benefit-sharing.

Objective 2 - Option 7

Supported by Mexico, Ecuador, Canada, USA

Increase transparency in access and benefit-sharing.

PRINCIPLES OF OBJECTIVE 2

Principles of Objective 2 - Option 1

Supported by Japan, European Union, Republic of Korea, Australia, Switzerland, Russian Federation, Canada, USA

- Patent applicants should not receive exclusive rights on inventions that are not new or inventive. The patent system should provide certainty of rights for legitimate users of genetic resources.

Principles of Objective 2 - Option 2

Supported by the African Group, India, Indonesia, Colombia, Iran, Syria, Sri Lanka, Nepal, Brazil, China, Panama

- The intellectual property system should provide certainty of rights for legitimate users and providers of genetic resources, their derivatives and/or associated traditional knowledge. The intellectual property system must provide for mandatory disclosure requirements ensuring that the intellectual property offices become key checkpoints for disclosure and monitoring the utilization of genetic resources, their derivatives and/or associated traditional knowledge. Administrative and/or judicial authorities shall have the right to (a) prevent the further processing of the intellectual property applications or (b) prevent the granting of intellectual property rights, as well as (c) revoke intellectual property rights subject to Article 32 of the TRIPS Agreement and render unenforceable intellectual property rights when the applicant has either failed to comply with the objectives and principles or provided false or fraudulent information.

Principles of Objective 2 - Option 6

Supported by Colombia

- Intellectual property rights applicants should not receive exclusive rights where free, prior and informed consent and fair and equitable benefit-sharing requirements for accessing and using genetic resources have not been met.

Principles of Objective 2 - Option 7

Supported by Mexico, El Salvador, Panama

- Persons applying for intellectual property rights involving the use of genetic resources and/or associated traditional knowledge have a duty of good faith and candor to disclose in their applications all background information relating to the genetic resources and associated traditional knowledge, including the country of source or origin.

OBJECTIVE 3

Objective 3 - Option 1

Supported by Mexico, Russian Federation, Japan, European Union, Australia, Canada, Switzerland, USA, Singapore, Republic of Korea

Ensure patent offices have available the information needed to make proper decisions in granting patents.

Objective 3 - Option 2

Supported by India, African Group, Indonesia, Syria, Sri Lanka, Iran, Nepal, El Salvador, Ecuador, Oman, Brazil

Ensure that intellectual property offices have appropriate and available information on genetic resources, their derivatives and/or associated traditional knowledge needed to make proper and informed decisions in granting intellectual property rights.

The information should include measures to ensure that prior informed consent has been obtained through the mandatory disclosure requirements, which can be made through an internationally recognized certificate of compliance described in the Nagoya Protocol.

Objective 3 - Option 4

Supported by African Group, Mexico, Thailand, Ecuador

Ensure patent offices have available the information needed to make proper decisions in granting patents based on the free prior and informed consent of the provider of the genetic resources and associated traditional knowledge, in accordance with relevant international legal instruments.

Objective 3 - Option 5

Supported by Indonesia

Ensure that national intellectual property offices do not grant patents on inventions based upon traditional knowledge and genetic resources which lack novelty or inventive step and where there is no compliance with the principles of prior informed consent and benefit-sharing recognized in the relevant international legal instruments.

PRINCIPLES OF OBJECTIVE 3

Principles of Objective 3 - Option 1

Supported by Russian Federation, Mexico, European Union, Japan, Republic of Korea, Singapore, Australia, USA, Canada

Patent offices must consider all relevant prior art when assessing the patentability of an invention.

Patent applicants must indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention.

There is a need to recognize that some holders of traditional knowledge may not want their knowledge documented.

Principles of Objective 3 - Option 2

Supported by the African Group, Russian Federation, India, Sri Lanka, Syria, Colombia, El Salvador, Nepal, Brazil, Ecuador, Oman, Peru, Panama

Intellectual property offices should consider all relevant prior art information relating to genetic resources, their derivatives and associated traditional knowledge when assessing the eligibility for grant of intellectual property rights.

Intellectual property applicants should disclose all background information of genetic resources, their derivatives and associated traditional knowledge relevant for determining the eligibility conditions.

OBJECTIVE 4

Objective 4 - Option 1

Supported by Republic of Korea, Australia, Russian Federation, Canada, Japan, European Union, Switzerland, Singapore, USA

Promote a mutually supportive relationship with relevant international agreements and processes.

Objective 4 - Option 2

Supported by African Group, Iran, Nepal, Syria

Promote a mutually supportive relationship with relevant international and regional agreements, processes, instruments and regimes related to genetic resources, associated traditional knowledge and human rights, in accordance with applicable rules of international law.

Objective 4 - Option 3

Supported by India, Ecuador, Mexico, Indonesia, African Group, El Salvador, Iran, Nepal, Oman, Colombia, Thailand, Syria, Brazil, Sri Lanka

Establish a coherent system which links intellectual property of genetic resources, their derivatives and associated traditional knowledge with the existing international agreements and treaties.

Objective 4 - Option 4

Supported by Bolivia

Ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous peoples to their genetic resources and/or associated traditional knowledge by establishing a transparent, independent, accessible mechanism for oversight and dispute resolution, with associated rights to local communities.

PRINCIPLES OF OBJECTIVE 4

Principles of Objective 4 - Option 1

Supported by Ecuador, Russian Federation, USA, Republic of Korea, European Union, Switzerland

Promote respect for and seek consistency with other international and regional instruments and processes.

Promote cooperation with relevant international and regional instruments and processes.

Principles of Objective 4 - Option 2

Supported by African Group, India, Syria, Sri Lanka, Russian Federation, USA, Oman, Nepal, Panama

Promote respect for and seek consistency with other international and regional instruments and processes.

Promote cooperation with relevant international and regional instruments and processes.

The work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should not prejudice the work pursued in other fora.

Principles of Objective 4 - Option 3

Supported by Bolivia

Respect the decisions adopted by the United Nations treaty bodies pertaining to cases submitted by indigenous peoples.

Principles of Objective 4 - Option 4

Supported by Brazil, Iran, Colombia

Support, in particular, the implementation of the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention of Biological Diversity.

Principles of Objective 4 - Option 6

Supported by Mexico, USA, Japan, Panama, Ecuador

Promotion of awareness raising and information sharing among different relevant and related international and regional agreements, instruments and processes related to genetic resources.

OBJECTIVE 5

Objective 5 - Option 1 *Supported by Bolivia*

Review the impact of the current intellectual property system that was developed without the recognition and protection of the rights of indigenous peoples with the aim of addressing the rights of indigenous peoples to their intellectual property.

Objective 5 - Option 2 *Supported by Russian Federation, European Union, Switzerland, Republic of Korea, Japan, Australia, USA, Canada*

Maintain the role of the intellectual property system in promoting innovation.

Objective 5 - Option 3 *Supported by Mexico, Japan, Australia, USA*

Recognize and maintain the role of the intellectual property system in promoting innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge.

Objective 5 - Option 4 *Supported by Mexico, Ecuador, USA*

Recognize the role of the intellectual property system in the protection of traditional knowledge, genetic resources and traditional cultural expressions.

Objective 5 - Option 6 *Supported by the African Group, India, Mexico, Brazil, Sri Lanka, Indonesia, El Salvador, Nepal, Ecuador, Syria, Colombia*

Recognize and maintain the role of the intellectual property system in promoting innovation, transfer and dissemination of technology, to the mutual advantage of knowledge holders and users of genetic resources, their derivatives and/or associated traditional knowledge, and in a manner conducive to social and economic welfare, while contributing to the protection of traditional knowledge, genetic resources, their derivatives and traditional cultural expressions.

Objective 5 - Option 10 *Supported by Bolivia*

Recognize and protect the rights of indigenous peoples to develop, create and protect their knowledge and innovations in relation to genetic resources in situ and external to the intellectual property system.

PRINCIPLES OF OBJECTIVE 5

Principles of Objective 5 - Option 1 *Supported by USA, Switzerland, Republic of Korea, Australia, Japan, Canada, European Union, Russian Federation*

Maintain the incentives for innovation provided by the intellectual property system.
Promote certainty and clarity of intellectual property rights.
Protect creativity and reward investments made in developing a new invention.
Promote transparency and dissemination of information by publishing and disclosing technical information related to new inventions, so as to enrich the total body of technical knowledge accessible to the public.

Principles of Objective 5 - Option 2

Supported by Mexico

Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources and associated traditional knowledge.
Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources and associated traditional knowledge.
Protect creativity and reward investments.
Promoting transparency and dissemination of information by publishing and disclosing technical information related to new inventions, where appropriate and when publicly available, so as to enrich the total body of knowledge accessible to the public.

Principles of Objective 5 - Option 3

Supported by African Group, India, Indonesia, Colombia, Holy See, Brazil, Syria, Ecuador, Nepal

Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge and in the protection of traditional knowledge, genetic resources, their derivatives and/or associated traditional knowledge and traditional cultural expressions and fair and equitable sharing of benefits arising from their use.
Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge and obligations with respect to the protection of traditional knowledge, genetic resources, their derivatives and/or associated traditional knowledge and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit-sharing.
Protect creativity, reward investments and ensure prior informed consent and fair and equitable benefit-sharing with the knowledge holders.
Promoting transparency and dissemination of information by disclosing country of origin and publishing and disclosing technical information related to new inventions, where appropriate and where publicly available, so as to enrich the total body of technical knowledge accessible to the public.

Principles of Objective 5 - Option 5

Supported by Mexico

Increase legal certainty and trust between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.

Principles of Objective 5 - Option 12

Supported by Holy See

Promote transparency and dissemination of information where not in contrast with public morality and/or public order.